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No. 08-959

Supreme Court, U.S.
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IN THE
Supreme Court of the United States

APOTEX, INC.,

Petitioner,

v.

JANSSEN PHARMACEUTICA, N.V.
and JANSSEN, L.P.,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

SUPPLEMENTAL BRIEF

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February 17, 2009

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**RULE 29.6 CORPORATE
DISCLOSURE STATEMENT**

Apotex included a Rule 29.6 Corporate Disclosure Statement in its Petition for a Writ of Certiorari filed on January 27, 2009. Pursuant to Rule 29.6 of this Court's Rules, Apotex incorporates by reference that prior Statement.

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SUMMARY OF SUPPLEMENTAL SUBMISSION

Petitioner Apotex respectfully submits this Supplemental Brief, pursuant to Rule 15.8 of this Court's Rules, to briefly advise the Court of new and "intervening matter" that was "not available at the time of [Apotex's] last filing" on January 27, 2009.

INTERVENING MATTER PRESENTED TO THE COURT

In its Petition, filed January 27, 2009, Apotex advised the Court that as of the date of that filing, the first ANDA-filer (Teva) for generic risperidone oral solution was not yet finally approved to market its product, despite having filed its ANDA in 2002 and having been approvable (but not approved) since 2006. As of that date, this fact was accurate. However, Apotex respectfully advises the Court that on or about January 30, 2009, the U.S. Food and Drug Administration ("FDA") granted final approval to Teva to market its generic risperidone oral solution product. On information and belief, Teva commenced selling its generic product on or about that same date. Apotex does not believe that such facts change or otherwise alter any of the arguments in its original Petition.

Apotex anticipates that respondent Janssen may now raise an issue of purported mootness, whether in an opposition brief or by way of motion, in light of FDA's approval and Teva's subsequent launch of its product. However, Apotex fully intends to oppose any such suggestion of mootness and disagrees that the underlying dispute raised in Apotex's Petition is in fact moot. To the contrary, the underlying dispute between Apotex and Janssen remains very much a live controversy of critical importance to Apotex, the generic pharmaceutical industry, and the public that relies upon that industry to bring affordable

medicines to market. Alternatively, this case falls squarely within the “capable of repetition, yet evading review” exception to the mootness doctrine, as demonstrated by discussion already set forth in Apotex’s pending Petition. Apotex reserves its rights to fully respond at an appropriate time and through the appropriate means to any suggestion or claim of mootness asserted by Janssen herein.

CONCLUSION

The new matter described above should change nothing. Rather, the petition for certiorari should be granted. Alternatively, the Court should call for the views of the Solicitor General before ruling on this Petition.

Respectfully submitted,

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